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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144

and

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

To: The Commission

COMMENTS

Respectfully submitted,

PARKINSON ELECTRONICS COMPANY, INC.
BANKS TOWER COMMUNICATIONS, LTD.
SPEED-NET
PEACOCK'S RADIO AND WILD'S COMPUTER
SERVICE, INC.
MOBILE RELAYS, INC.

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SUMMARY

Parkinson Electronics Company, Inc., Banks Tower Communications, Ltd., Speed-Net, Peacock's Radio and Wild's Computer Service, Inc. and Mobile Relays, Inc. (collectively the "SMR Operators") respectfully submits their Comments in response to the Further Notice of Proposed Rule Making issued by the Federal Communications Commission in the above-captioned proceeding.

The SMR Operators consist of small, independent operators who individually have been in the two-way radio business for decades. The individual companies in the group are typical of the entities which have built the SMR industry, and the SMR Operators include entities which have received wide-area authority from the Commission (Parkinson and Mobile Relays, with Speed-Net's request pending).

The SMR Operators have reviewed a draft of PCIA's Comments in this proceeding, and the SMR Operators believe that the PCIA proposal represents the best solution to create a geographic licensing mechanism while protecting the rights of incumbent licensees. Therefore, the SMR Operators urge the Commission to adopt the PCIA proposal.

PCIA's proposal can be summarized as supporting: (1) assignment of channels in blocks of ten; (2) assignment of channels in geographic areas smaller than Major Trading Areas; (3) assignment of channels in a two-step process without auctions; and (4) protection of incumbent licensees from interference with no mandatory relocation. The SMR Operators support these positions.

However, the SMR Operators wish to discuss further the impact on their individual businesses of two issues in this proceeding, mandatory relocation and the channel block size.

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To: The Commission

COMMENTS

Parkinson Electronics Company, Inc. ("Parkinson"), Banks Tower Communications, Ltd. ("Banks"), Speed-Net ("Speed-Net"), Peacock's Radio and Wild's Computer Service, Inc. ("Peacock") and Mobile Relays, Inc. ("Mobile Relays") (collectively the "SMR Operators"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, respectfully submits their Comments in response to the Further Notice of Proposed Rule Making issued by the Federal Communications Commission in the above-captioned proceeding.¹

¹59 FR 60111 (November 22, 1994). An extension of the filing date was granted by Order of the Acting Chief, Land Mobile and Microwave Division, Private Radio Bureau, released November 28, 1994. 59 FR 63974 (December 12, 1994).

I. BACKGROUND

A. The SMR Operators

Speed-Net is an association of independent radio dealers in the Middle Atlantic portion of the United States. Many of the independent radio dealers participating in Speed-Net have been involved in the radio business for more than a decade. Others began as dealers more recently. The Speed-Net participants have watched an evolution in the SMR marketplace in the past two years, and the participants recognize that in order to remain competitive they must also evolve. Speed-Net has on file with the Commission a Request for Extended Implementation, which seeks to create a network between the Speed-Net participants and implement advanced technology equipment to offer services competitive with the three other wide-area service providers currently licensed in the Mid-Atlantic.

Parkinson is the one of the largest SMR service providers in the Levelland/Lubbock and Amarillo, Texas areas and has been in the two-way radio business since 1955 and began offering SMR service in 1979. In addition, Parkinson manufactures antenna tower monitors and parts for land mobile radio systems, some of which are incorporated into General Electric 800 MHz trunked radios. Parkinson has been granted a wide-area license by the Commission for the Levelland/Lubbock area, and Parkinson has already constructed its first advanced technology transmitter site under its wide-area authority using Ericsson-GE's "EDACS" technology.

Parkinson's wide-area system consists of more than 450 channels, resulting from the reuse of approximately 100 discrete channels.

Mobile Relays is the largest SMR service provider in the McAllen/Brownsville, Texas area. Mobile Relays has been in the two-way radio business since 1974. Mobile Relays is a firm believer in the application of state-of-the-art technology to improve its operating systems and the resultant service to its SMR customers. It is a strong supporter of the FCC's actions to apply new technologies and operational procedures to improve overall the spectrum efficiency for wireless communications. Mobile Relays has been granted a wide-area license by the Commission and is in the planning stages of its wide-area development.

Banks is a family company with a history in the communications business beginning in the 1940s, when Banks' principals began operation of the first black broadcast radio station in Philadelphia, Pennsylvania. Since that time Banks, which is more than 75% female-owned, has been a pioneer in the communications business. This history includes founding the first UHF-TV station in Philadelphia as well as the first all-talk radio station in the country in the 1970s. In 1964, Banks entered the tower site development and management business, which has now expanded to more than a dozen states.

Banks began offering SMR service in 1981, and Banks now operates eighteen (18) 800 MHz channels in Philadelphia and ten (10) 800 MHz channels in Atlantic City, New Jersey. Further, Banks is the licensee of a 900 MHz SMR System in Miami.

Peacock began in the two-way radio sales and service business in 1976. Peacock offered the first SMR service in Arkansas and Tennessee in the early 1980s. Peacock now operates more than sixty-five (65) channels along the Arkansas/Tennessee border.

Together, Banks, Speed-Net, Peacock, Parkinson and Mobile Relays are representative of the core backbone of the SMR industry, long-standing operators which are small businesses, investing their time and equity into developing their businesses. Each company, individually, has vigorously pursued the reasonable expansion and growth of their operations and have participated in industry associations² to benefit the entire industry and their customer bases, believing that a level playing field will yield the most competitive marketplace. However, the SMR Operators are concerned that in this proceeding the Commission may inadvertently tilt the playing field, making the SMR Operators unable to fairly compete.

B. The Commission's Current Proposal

The Commission has proposed in this proceeding to:

- ▶ Designate the 861-865 MHz contiguous SMR spectrum in the SMR Pool for licensing in four 50 channel blocks in each MTA.
- ▶ Designate the remaining 80 non-contiguous 800 MHz SMR Category channels for local licensing on a channel-by-channel, transmitter specific basis.

²For their part, Peacock and Banks have participated in the Personal Communications Industry Associations ("PCIA") Task Force which was responsible for making recommendations to PCIA's SMRA Council for comments in this proceeding. Parkinson has been a member of various NABER (now PCIA) Councils for over a decade and has been actively involved in determining association positions on a variety of issues. Various members of Speed-Net have been similarly involved with NABER.

- ▶ Dispose of mutually exclusive initial applications for all 800 MHz SMR licenses (both MTA-based and local) through competitive bidding.
- ▶ Grant the following rights as part of each MTA license: (1) the right to construct at any available site (given short-spacing limitations with incumbents) within the MTA, and to add, subtract, or move site locations within the MTA during the license term, on a "self-coordinated" basis; (2) the right to use any available spectrum within the licensee's designated spectrum block on a self-coordinated basis, including full discretion over channelization of available spectrum within the block (subject to co-channel interference protection of incumbent licensees); (3) the right to use any spectrum within the MTA block that is recovered by the Commission from an incumbent SMR licensee in the event of termination of the incumbent's license; and (4) the right to negotiate to acquire incumbent systems within the MTA block.
- ▶ Establish a five-year construction period for MTA licensees from the date the MTA license is granted, with licensees required to provide coverage to one-third of the population within their MTA within three years after initial grant of the MTA license and to two-thirds of their population by the end of the five-year period, and with licenses subject to cancellation for failure to meet these interim coverage requirements.
- ▶ Allow incumbent SMR systems within each MTA block to continue operating at previously authorized sites and on previously authorized channels, and require MTA licensees to provide co-channel interference protection to such facilities.
- ▶ On the 80 locally licensed channels, limit applicants to obtaining five channels at a time within any geographic area and require all such channels to be constructed and operating before additional channels can be obtained in the same area; require construction and commencement of operations within 12 months of license grant; and, discontinue acceptance of applications for extended implementation under Section 90.629 of the Commission's rules.
- ▶ Prohibit new use of the General Category channels for commercial operation. Alternatively, designate a portion of the General Category for commercial operation only.
- ▶ Prohibit extended implementation periods for the "lower 80" SMR Pool channels.

II. COMMENTS

A. Overview Of This Proceeding

The SMR Operators have reviewed a draft of PCIA's Comments in this proceeding, and the SMR Operators believe that the PCIA proposal represents the best solution to create a geographic licensing mechanism while protecting the rights of incumbent licensees. Therefore, the SMR Operators urge the Commission to adopt the PCIA proposal. However, the SMR Operators wish to discuss the impact on their individual businesses of two issues in this proceeding, mandatory relocation and the channel block size.

Initially, it is recognized that licensing on a geographic basis would be particularly advantageous to Parkinson and Mobile Relays, which already have wide-area licenses, and Speed-Net, which has a wide-area filing pending. However, as discussed below, it would not be feasible for Parkinson, Mobile Relays or Speed-Net to participate in geographic licensing as currently proposed by the Commission. Therefore, it is critical that the Commission adopt the changes proposed by PCIA.

B. No Mandatory Relocation Of Incumbent Licensees

Generally, the SMR Operators support a form of wide-area licensing which allows existing licensees flexibility in site selection and growth possibilities, reduces speculative filings and reduces the Commission's burden to process applications quickly. However, the SMR Operators would be devastated by the mandatory relocation proposal submitted by Nextel. While the Commission has not initially proposed to include the mandatory relocation

provision, the SMR Operators are concerned that the Commission has requested comments on the issue.

As an example of the impact of mandatory relocation on independent licensees, all but five (5) of Parkinson's 100 discrete channels are located in the 861/865 MHz band, and are evenly distributed throughout the band. Thus, if Nextel were able to convince the Commission that mandatory relocation is necessary, Parkinson would be required to retune thousands of radios and reconfigure dozens of transmitter sites.

The impact of the retuning cannot be minimized. Dispatch radios cannot be retuned one by one over a period of time. Rather, an entire fleet must be retuned at the same time in order to ensure that the fleet can continue to communicate with each other. In addition, Parkinson and Peacock are participants in General Electric roaming networks. Therefore, thousands of users over a six state region would need to be reprogrammed in order to accommodate the retuning of just the Parkinson and Peacock systems. This logistical, costly exercise would benefit only one party, Nextel.

A mandatory relocation requirement only serves Nextel, as Nextel is the only entity with enough 856/860 MHz spectrum to move incumbents. Nextel has sold the Commission on its ability to create a third competitor in the cellular arena. The Commission has acted in accordance with this view and has sought to create a cellular competitor in this proceeding. Since its inception, Nextel has always represented to the Commission that it can operate

in a crowded spectrum environment which defines the 800 MHz market. However, Nextel now seeks to convince the Commission that it needs contiguous spectrum and larger channel blocks, and wants the Commission to create virgin spectrum out of spectrum on which licensees have operated and invested their life savings for more than twenty years, all to benefit Nextel alone. Only now is it being acknowledged that in actuality Nextel's proposed system is only an enhanced dispatch system.³

This is not to say that the SMR Operators believe that advancements in technology and service offerings should be stymied and held back in any way. However, all operators must have the opportunity to grow and expand their businesses. The marketplace should determine which businesses survive, it should not be the province of the Commission to interfere in the natural evolution of the marketplace.

The true impact of mandatory relocation is to render the systems operated by Parkinson, Peacock, Mobile Relays, Banks and Speed-Net virtually valueless. While it has never been the position of the SMR Operators to hold Nextel "hostage" for spectrum which Nextel desires, Nextel should not be able to create the same result through regulatory fiat.

On this basis, the SMR Operators urge the Commission to continue its refusal to incorporate a mandatory relocation requirement into the new 800 MHz rules.

³See, For Nextel, '94 Was Best of Times and Worst of Times, Wall Street Journal, January 3, 1995 at A14.

C. Wide-Area Licensing - Channel Blocks And Geographic Areas

The SMR Operators would like to file applications for geographic licenses in their respective service areas. However, the Commission's proposal makes such applications impossible. First, the MTA blocks proposed by the Commission are far too large. For example, Mobile Relays would be forced to participate in a competitive licensing process with licensees in San Antonio, a major urban area hundreds of miles from Mobile Relays' service area and a location where Mobile Relays currently has no spectrum. As a result, Mobile Relays could not meet the Commission's requirements for build-out, nor does Mobile Relays have the resources to build-out such a large area even if the spectrum was available.

Parkinson's situation is similar to Mobile Relays. Parkinson, in Levelland, Texas, would be forced to apply for a license which includes Dallas and Shreveport, Louisiana. Parkinson would need to compete with Nextel and Dial Call for a wide area license, which in an auction context would be impossible for Parkinson. Thus, Parkinson would be unable to obtain the licensing flexibility which the Commission seeks to provide in this proceeding.

Peacock's relatively small service area falls within three (3) MTA blocks. It would clearly not be possible for Peacock to compete for licenses in each area.

Similarly, the SMR Operators could not compete for licenses which consist of 50 channel blocks. While each entity is the licensee of multiple channels, such channels are spread throughout

the band. It makes no sense for the SMR Operators to compete for licenses for frequencies they cannot use and cannot afford.

It has been suggested by the Commission that licensees could "sub-license" portions of their spectrum blocks if the Commission's proposal is adopted.⁴ However, such sub-licensing can result in the ability of the geographic licensee to take advantage of the incumbent, forcing the incumbent to accept conditions otherwise intolerable in order to stay in business. Again, this has the potential of totally devaluing the incumbent's spectrum, by making the system unassignable to anyone except the geographic licensee.

The SMR Operators believe that the Commission has an opportunity, through adoption of PCIA's proposal to license smaller channel blocks in smaller service areas, to create a licensing system whereby the need to sub-license is minimized, and any sub-licensing is pursuant to the dictates of the marketplace, not the regulatory power of one licensee over another.

D. Assignment Mechanism And Opposition To Auctions

The SMR Operators believe that the two-step licensing proposal submitted by PCIA is fair to all licensees and applicants. By limiting Phase 1 licenses to applicants to ask for a wide-area license to convert existing operations into wide-area operations, incumbents are presented with a genuine opportunity to participate in geographic licensing. By considering a Phase 1 license to be a modification of an existing license, the Commission minimizes mutually exclusive applications.

⁴FNPRM at para. 22.

The SMR Operators remain strongly opposed to any auction of channels in the band. 47 U.S.C. §309(j)(6)(E), requires the Commission to "... continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in licensing proceedings." The SMR Operators believe that the Commission has been given a valid proposal which uses such "solutions" to minimize speculative applications.

It was the intention of Congress in granting auction authority to give the Commission an alternative licensing mechanism with which to discourage speculative filings. However, a review of the legislative history shows that Congress intended auctions to be imposed on new services, not reconfigurations of existing services.⁵ An auction is unnecessary in this context and would result in incumbents such as the SMR Operators being unable to participate in geographic licensing.

⁵H.R. Rep. No. 103-111, 103d Cong. 1st Sess. (1993) at 263. Although the 800 MHz SMR service has been subject to the type of application "mills" which Congress has sought to discourage, the implementation of the wide-area licensing scheme with incumbent rights will negate the impact of future application mill filings.

III. CONCLUSION

The SMR Operators support the proposal contained in PCIA's Comments and urges the Commission to adopt the proposal. **WHEREFORE**, Parkinson Electronics Company, Inc., Banks Tower Communications, Ltd., Speed-Net, Peacock's Radio and Wild's Computer Service, Inc. and Mobile Relays, Inc. respectfully request that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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